

**CHAPTER NO. 39**

**HOUSE BILL NO. 1953**

**By Representative Baird**

**Substituted for: Senate Bill No. 1947**

**By Senator McNally**

AN ACT to amend Chapter 39 of the Private Acts of 1981; and any other acts amendatory thereto, relative to the levy of a privilege tax on the occupancy of any rooms, lodgings, or accommodations furnished to transients by any hotel, inn, tourist camp, tourist court, tourist cabin, motel or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration in the City of Caryville.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Chapter 39 of the Private Acts of 1981, is amended by deleting from the caption the language "in municipalities incorporated under Tennessee Code Annotated, Title 6, Chapter 1, with a population of not less than six hundred twenty (620) nor more than six hundred seventy (670) according to the 1970 Federal Census or any subsequent Federal Census of Population", and by substituting instead the language "in the City of Caryville".

SECTION 2. Sections 1 through 11 of Chapter 39 of the Private Acts of 1981, is amended in its entirety to read as follows:

SECTION 1. Definitions. For the purposes of this act:

(1) "City" means the incorporated City of Caryville, Tennessee.

(2) "Clerk" means the City Clerk of Caryville, Tennessee, or such other person appointed by the City Legislative Body of Caryville, Tennessee by ordinance to act as collector of the tax imposed by this act.

(3) "Consideration" means the consideration charged, whether or not received, for the occupancy in a hotel valued in money whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature without any deduction therefrom whatsoever. Nothing in this definition shall be construed to imply that consideration is charged when the space provided to the person is complimentary from the operator and no consideration is charged to or received from any person.

(4) "Hotel" means any structure or space, or any portion thereof, which is occupied or intended or designed for occupancy by transients for dwelling, lodging or sleeping purposes, and includes any hotel, inn, tourist camp, tourist court, tourist cabin, motel, or any place in which rooms, lodgings or accommodations are furnished to transients for a consideration.

(5) "Occupancy" means the use or possession, or the right to the use or possession, of any room, lodgings, spaces or accommodations in any hotel.

(6) "Operator" means the person operating the hotel whether as owner, lessee or otherwise.

(7) "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental entity, or any other group or combination acting as a unit.

(8) "Transient" means any person who exercises occupancy or is entitled to occupancy for any rooms, lodgings or accommodations in a hotel for a period of less than thirty (30) continuous days.

SECTION 2. Levy of Tax. The City Council of the City of Caryville, Tennessee, is authorized to levy a privilege tax upon the privilege of occupancy in any hotel of each transient, by ordinance of the City Legislative Body, in an amount not to exceed five percent (5%) of the rate charged by the operator. Such tax is a privilege tax upon the transient occupying such room and is to be collected as provided in this act.

SECTION 3. Collection -- Refund. (a)(1) The tax shall be added by each and every operator to each invoice prepared by the operator for the occupancy of the operator's hotel and to be given directly or transmitted to the transient.

(2) The tax so invoiced shall be collected by such operator from the transient and remitted to the clerk as provided in Section 4(b).

(b) When a person has maintained occupancy for thirty (30) continuous days, that person shall receive from the operator a refund or credit for the tax previously collected or charged to that person, and the operator shall receive credit for the amount of such tax if previously paid or reported to the city.

SECTION 4. Remittance of tax - Monthly tax return - Annual audit.

(a) The tax levied shall be remitted by all operators who lease, rent or charge for any rooms, or spaces in hotels within the city, to the clerk or such other officer as may by ordinance be charged with the duty of collection thereof, the tax to be remitted to such officer not later than the twentieth (20th) day of each month for the preceding month. The operator is hereby required to collect the tax from the transient at the time of the presentation of the invoice for occupancy as may be the custom of the operator, and if credit is granted by the operator to the transient, then the obligation to the city entitled to such tax shall be that of the operator.

(b) For the purpose of compensating the operator in accounting for remitting this tax, the operator shall be allowed two percent (2%) of the amount of the tax due and accounted for and remitted in the form of a deduction in submitting the operator's report and paying the amount due by such operator, provided the amount due was not delinquent at the time of payment and provided further that the maximum deduction allowable to the operator for any one month shall not exceed the sum of twenty-five dollars (\$25.00).

(c)(1) The clerk shall be responsible for the collection of such tax and shall place the proceeds of such tax in accounts for the purposes stated herein.

(2) A monthly tax return shall be filed under oath with the clerk by the operator with such number of copies thereof as the clerk may reasonably require for the collection of such tax.

(3) The report of the operator shall include such facts and information as may be deemed reasonable for the verification of the tax due. The form of such report shall be developed by the clerk and approved by the City Legislative Body prior to use.

(4) The clerk shall audit each operator in the city at least once per year and shall report on the audits made on a quarterly basis to the City Legislative Body.

(d) The City Legislative Body is hereby authorized to adopt reasonable rules and regulations for the implementation of the provisions of this act, including the form for such reports.

SECTION 5. Restriction on Operator. No operator of a hotel shall advertise or state in any manner, whether directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rent, or that if added, any part will be refunded.

SECTION 6. Delinquent taxes -- Interest and penalty. (a) Taxes collected by an operator which are not remitted to the clerk on or before the due dates provided in Section 4 are delinquent.

(b) An operator is liable for interest on such delinquent taxes from the due date at the rate of twelve percent (12%) per annum, and is liable for an additional penalty of one percent (1%) for each month or fraction thereof such taxes are delinquent. Such interest and penalty shall become a part of the tax herein required to be remitted.

(c) Each occurrence of willful refusal of an operator to collect or remit the tax or willful refusal of a transient to pay the tax imposed is a violation of this act and shall be punishable by a civil penalty not in excess of fifty dollars (\$50.00).

SECTION 7. Records -- Inspection. It is the duty of every operator liable for the collection and payment to the city of any tax imposed by this act to keep and preserve for a period of three (3) years all records as may be necessary to determine the amount of such tax for which the operator may have been liable for the collection of and payment to the city, which records the clerk shall have the right to inspect at all reasonable times.

SECTION 8. Administration and enforcement -- Remedies of taxpayers. (a) The clerk in administering and enforcing the provisions of this act has, as additional powers, those powers and duties with respect to collecting taxes as provided in Title 67 of Tennessee Code Annotated or otherwise provided by law for the clerks.

(b) Upon any claim of illegal assessment and collection, the taxpayer has the remedies provided in Tennessee Code Annotated, Title 67; it being the

intent of this act that the provisions of law which apply to the recovery of state taxes illegally assessed and collected shall also apply to the taxes illegally assessed and collected under the authority of this act. The provisions of Tennessee Code Annotated, Section 67-1-707, shall be applicable to adjustments and refunds of such tax.

(c) With respect to the adjustment and settlement with taxpayers, all errors of taxes collected by the clerk under authority of this act shall be refunded by the clerk; provided, however, that any claim for such refund alleged to have been erroneously or illegally paid shall be filed with the clerk, supported by proper proof, within one (1) year from the date of payment, otherwise the taxpayer shall not be entitled to refund and the claim for refund shall be barred.

(d) Notice of any tax paid under protest shall be given to the clerk and the ordinance authorizing the levy of the tax shall designate a municipal officer against whom suit may be brought for recovery.

SECTION 9. Disposition and Deposit of proceeds. The proceeds of the tax received by the city from the tax levied pursuant to this act shall be used for purposes authorized in the ordinance of the City Legislative Body levying the tax and shall be allocated to and placed in the general fund or in such other fund of the city as by said ordinance may be authorized and designated.

SECTION 10. Tax is additional tax. The tax herein levied shall be in addition to all other taxes levied or authorized to be levied whether in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes now levied or authorized to be levied.

SECTION 11. Limitation on levy of tax. The tax levied pursuant to the provisions of this act shall only apply in accordance with the provisions of Tennessee Code Annotated, Section 67-4-1425 and shall be levied only on the occupancy of hotels located within the boundaries of the City.

SECTION 3. Severable provisions. The provisions of this act are hereby declared to be severable. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

SECTION 4. This act shall have no effect unless it is approved by a two-thirds (2/3) vote of the Legislative Body of the City of Caryville, Tennessee. Its approval or non-approval shall be proclaimed by the Presiding Officer of the City Legislative Body and certified by the Presiding Officer of the City Legislative Body to the Secretary of State.

SECTION 5. For the purpose of approving or rejecting the provisions of this act, it shall be effective upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect upon being approved as provided in Section 4.

**PASSED: May 17, 1999**

  
JIMMY RAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

APPROVED this    day of    1999

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DON SUNDQUIST, GOVERNOR

Pursuant to Article III, Section 18, of the Constitution of the State of Tennessee, the Governor had House Bill No. 1953 in his possession longer than ten (10) days, so therefore the bill becomes law without the Governor's signature.